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**IN THE THIRD DISTRICT JUVENILE COURT  
SALT LAKE COUNTY, STATE OF UTAH**

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STATE OF UTAH, in the interest of	:	<b>MEMORANDUM IN SUPPORT OF</b>
	:	<b>MOTION TO DISMISS</b>
<b>JENSEN, PARKER</b>	:	<b>VERIFIED PETITION</b>
	:	
	:	Case No: 426020
	:	
A Child under 18 years of age.	:	Judge Robert S. Yeates

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The Division of Child and Family Services, through its counsel, Mark W. May, Assistant Utah Attorney General, submits this *Memorandum in Support of Motion to Dismiss Verified Petition*.

**BACKGROUND**

1. On approximately May 2, 2003, Parker Jensen had a small growth removed from his mouth. A routine test of the growth revealed the presence of a cancer known as Ewing's Sarcoma. *See Verified Petition and Motion to Transfer Custody and Guardianship ("Verified Petition")* p. 2, ¶ 4.
2. Daren and Barbara Jensen were informed of the diagnosis on May 20, 2003 by Dr. Lars Wagner and arrangements were made for Parker to begin chemotherapy. *Id.* at ¶ 5.
3. The Jensens, however, subsequently cancelled the chemotherapy treatment.

Despite attempts by doctors at Primary Children's Hospital to address the family's treatment concerns, the Jensens broke off communications with the Hospital and refused to provide Parker with chemotherapy treatment. *Id.* at ¶¶ 6-10.

4. On June 17, 2003, the Division filed its *Verified Petition* seeking custody of Parker.

5. On June 20, 2003, a pretrial hearing was held. The Order from that pretrial states: The parties believed that a stipulation was possible, and requested a continuance. The Guardian ad Litem stated his expectation that Mr. and Mrs. Jensen would provide proof that Parker has a licensed treating physician and that Parker would receive treatment that is accepted by the general medical community as appropriate for Parker's illness and is administered by a licensed treatment provider. The court expressed the same expectations, and the parents expressed their willingness to provide said information.

*See Pre-Trial Order*, dated August 12, 2003.

6. On approximately June 26, 2003, the Jensens filed *The Natural Father & Mother's Answer to State's Petition*, ("Answer"). The Jensens admitted Dr. Wagner "informed them of his diagnosis and recommended treatment" but claimed they "lack[ed] knowledge of the precise diagnosis of the lesion . . ." and claimed "[t]he precise diagnosis of the minor child's lesion . . . is subject to dispute at this stage . . ." (*Id.* at ¶¶ 4 & 5 & p.6). The Jensens also asserted they had "ordered additional testing on the lesion [and] . . . [t]hese results may shed additional and vital light into the precise diagnosis and urgency of this matter." *Id.* at p. 6. The Jensens also claimed they were "by no means closed to the possibility of Dr. Wagner's 'standard therapy.'" *Id.* at ¶ 8.

7. On July 10, 2003, a further pretrial hearing was held. The Jensens made a proposal, which was agreed to by the other parties and the Court. The Jensen's proposal stated in part:

1. The parents would obtain the first available appointment for Parker at the Los Angeles Children's Hospital, and that appointment would occur no later than July 20, 2003.

2. Los Angeles Children's Hospital would evaluate Parker and recommend a course of treatment.

...

4. The Jensens will follow the recommendations of the Los Angeles Children's Hospital, including initiating chemotherapy if that was recommended.

*See Pre-Trial Order*, dated September 22, 2003.

8. On July 28, 2003 a hearing was held. Dr. David Tishler of the Los Angeles Children's Hospital testified via telephone. Dr. Tishler confirmed the diagnosis of Ewing's Sarcoma and recommended chemotherapy for Parker. Based on the Jensen's prior proposal, the Court's prior orders and Dr. Tishler's testimony, the Court made the following order:

2. Parker Jensens shall receive chemotherapy on or before August 8, 2003.

*See Order for Treatment*, dated August 15, 2003.

9. By August 8, 2003, Parker was not receiving chemotherapy and thus, the Jensens had failed to abide by their own proposal and the Court's order. The Jensens attorney, Blake Nakamura, informed the Court that the Jensens intended to take Parker to the Bryzinski Clinic in Houston Texas to enroll him in a clinical trial. Dr. Karen Albritton informed the Court she was familiar with the Clinic and believed the Clinic did not provide chemotherapy. Based on this information, the Court issued a warrant placing Parker in the Division's protective custody. Mr. Nakamura subsequently informed the Court that Daren and Barbara Jensen were aware of the warrant, but he did not know their whereabouts. *See Emergency Hearing Order*, dated August 15, 2003 and *Guardian ad Litem's Motion for Order to Show Cause*, and *Affidavit in Support of Order to Show Cause*, dated August 13, 2003.

10. On August 13, 2003 an Emergency Hearing was held and the Court issued a Bench Warrant for the Jensen's arrest. *See Emergency Hearing Order*, dated August 15, 2003.

11. On August 20, 2003, a Review Hearing was held. The Court denied the Jensen's motion to rescind the warrants. *See, Review Order*, dated September 22, 2003.

12. On August 29, 2003, an Expedited Review hearing was held. The Division and Mr. Nakamura requested the warrants be lifted. The Division made this request because at that point in time, Parker and his mother were in hiding and Parker was not receiving chemotherapy. Also, Mr. Nakamura informed the Division and the Court that his clients needed to be together to negotiate "a deal whereby they would seek treatment for Parker from a board certified pediatric oncologist of their choice." Based on these facts and representations, the Division believed the best chance for Parker to receive chemotherapy was for the warrants to be lifted and an agreement reached. The Court temporarily stayed the warrants. *See Order*, dated September 15, 2003.

13. On September 3, 2003, a hearing was held. The parties informed the Court that negotiations were proceeding and making progress. The Court reiterated its concerns that the Jensens were not following Court orders and that any agreement must contain specific time lines for Parker's medical care. *See Order Re: September 3, 2003*.

14. On September 5, 2003, a hearing was held. The parties provided the Court with a Stipulated Agreement. The key component of the Agreement stated:

1. Daren and Barbara Jensen shall submit Parker Jensen to the care of Dr. Martin Johnston of St. Luke's Hospital in Boise, Idaho. . . . Daren and Barbara Jensen will follow Dr. Johnston's recommended treatment for Parker within the time frames set by Dr. Johnston.

At the Hearing, the Court specifically asked Mr. and Mrs. Jensen whether they would ensure

Parker receives chemotherapy if that was ultimately the medically recommended treatment. Both Mr. and Mrs. Jensen affirmed they would. *See Stipulated Agreement*, dated September 5, 2003 and *Order Re: September 5, 2003*.

15. On October 9, 2003, a hearing was held. By telephone, the Court heard the testimony of Dr. Martin Johnston. Dr. Johnston confirmed Parker's tumor was Ewing's sarcoma, stated his belief that Parker still had cancer and recommended chemotherapy. Despite the written and oral promises made to the Court on September 5, 2003, the Jensens refused to follow Dr. Johnston's recommendations. *See Order Re: October 9, 2003*. Also, at the hearing, the Court asked for the name of Parker's current treating physician. Mr. Jensen stated Parker recently had been seen in California and locally but refused to provide the names of Parker's current treating physicians within the United States.

16. Additionally, at the October 9, 2003 hearing, the Division informed the Court that it would not seek custody of Parker to force chemotherapy. The Division explained: Parker is currently under the belief that chemotherapy is a poison that will kill him; Parker is nearly 13 years old; Daren and Barbara Jensen now adamantly oppose chemotherapy; and chemotherapy for Parker would last approximately 48 weeks. The Division further explained that after consulting with pediatric oncologists and relying on its own social work expertise, the Division concluded that it was not feasible to force 48 weeks of chemotherapy on an unwilling and unsupported 13 year old child.

17. Also at the October 9, 2003 hearing, Dr. Johnston's September 26, 2003 letter to the Jensens was introduced as an exhibit. It stated:

Furthermore, you have specifically told me that you would do whatever you could to disrupt any attempt to treat Parker with chemotherapy, and that you would take action against me and the institutions with which I am affiliated if we

attempted to treat Parker as recommended.

*See Letter from Dr. Martin Johnston to Mr. and Mrs. Jensen, dated September 26, 2003.*

18. On October 15, 2003, the Jensens provided the Division with a letter from Dr. ----  
-----, Dr. ----- stated she would be treating Parker with “immune enhancing therapies” and  
she would continue testing Parker “so that his progress will be continually monitored for  
possible recurrence of the disease.” *See Exhibit A, Letter from Dr. -----, dated October 15,*  
2003.

19. On October 17, 2003, Dr. ----- clarified the testing Parker will receive. Parker  
will receive regular blood and radiologic testing. Initially the blood testing will occur monthly  
and the radiologic exams will occur quarterly. Although frequency may vary, such testing will  
continue for at least five years. *See Exhibit B, letter from Dr. -----, dated October 17, 2003.*  
The Division believes the duration of testing will be adequate based on Dr. Martin Johnston’s  
opinion that Parker’s cancer will spread within three to five years.

## **DISCUSSION**

The Division became involved in this matter to ensure Parker received chemotherapy in  
an effort to save his life from cancer. The Division’s actions were based on the best medical  
evidence available in this State and indeed, this Nation. The Division’s legal work, negotiations  
and efforts have been in furtherance of achieving this goal.

The Jensen’s resistance to chemotherapy has been a moving target. At first it was a clash  
with doctors at Primary Children’s Hospital; then it was a claim that they were denied a second  
opinion; then it was the accuracy of the diagnosis; then it was a vague conspiracy between  
Primary Children’s Hospital and other doctors - all the while claiming they would submit Parker

to chemotherapy if they could just get one more opinion. The inaccuracy of that claim was only recently exposed.

Upon learning the Jensens would not submit Parker to chemotherapy under any circumstance, the Division had to make a decision. Should it seek an Order to Show Cause and/or request custody of Parker, and what would be the consequences of each decision?

The Division would likely succeed on an Order to Show Cause. The Jensens ignored Court orders on multiple occasions. Having the Jensens go to jail, however, would do nothing for Parker. Indeed, having the Jensens in jail for up to 30 days would likely impede Parker's medical treatment.

Obtaining custody of Parker to force chemotherapy was also unworkable. As previously explained, assuming a qualified doctor or institution would agree to provide the chemotherapy, knowing they will be harassed and sued by Mr. and Mrs. Jensen, it is still not feasible to force an unwilling and unsupported 13 year old boy to undergo 48 weeks of chemotherapy. Also, in addition to the feasibility difficulties, it would also be emotionally difficult or damaging to force separation and treatment on Parker. Additionally, placement in foster care presents its own problems and could not guarantee Parker's cooperation or successful treatment. As perhaps best summarized by Dr. Martin Johnston in his letter to the Jensens: "I cannot effectively treat Parker without your cooperation given the necessities of the recommended treatment regimen." (*See* Exhibit 1 from October 9, 2003 hearing.)

The decision not to force chemotherapy was not made lightly. The Division fully understands that without chemotherapy at this time, Parker's chances to live fall dramatically. Nevertheless, even after numerous hours of discussion with numerous individuals the Division

could conceive of no practical way to force chemotherapy.

After making the decision not to force chemotherapy, the obvious question became - why continue with the case? If chemotherapy cannot be forced, the next best option is to ensure Parker is under the care of a doctor and that he is routinely tested to ensure the cancer has not spread. The Jensens have been unwilling to provide such information to the Division. This refusal even extended to the Court, when on October 9, 2003, Mr. Jensen refused to tell the Court the name of Parker's current treating physician. The Division continued with this case because it was not willing to drop its Petition unless it had reasonable assurances that Parker was under a doctor's care and would be regularly tested to determine if his cancer had spread.

On October 15, 2003, and October 17, 2003, the Division received the information it sought. *See Exhibits A & B*. As a point of clarification, based on the opinions of pediatric oncologists, the Division does not believe the "immune enhancing therapies" are a viable substitute to combat Ewing's Sarcoma. The Division, however, does believe such therapies will not harm Parker. Also, Parker will be routinely tested. If the cancer does spread, the Jensens have indicated Parker will then receive chemotherapy - although the Division admittedly has no way to ensure the veracity of the Jensen's claim.

Based on the above, the Division asks the Court to dismiss the Verified Petition. The Division cannot achieve its goal of ensuring Parker receives chemotherapy. The Division has done all it can do. The Verified Petition should be dismissed.

DATED: October \_\_\_, 2003.

UTAH ATTORNEY GENERAL

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